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FILED
JUN 21 1982
ALEXANDER L. STEVAS,
CLERK

NO. 81-2339

In the Supreme Court of the United States

OCTOBER TERM, 1981

ANN R. PETERSON BUCHANON

Plaintiff-Appellant

VERSUS

MACON COUNTY COMMUNITY ACTION COMMITTEE, INC., MACON COUNTY HEAD START PROGRAM, MACON COUNTY BOARD OF EDUCATION, AND COMMUNITY SERVICES ADMINISTRATION

Defendants-Appellees

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION

Whether the District Court improperly granted the motions for summary judgment filed on behalf of the defendants, Macon County Community Action Committee, Inc., Macon County Head Start Program, Community Services Administration and Macon County Board of Education.

PROVISIONS AND STATUTES

This case involves the Fifth and Fourteenth Amendments of the United States Constitution. This case further involves 28 U.S.C. §§ 1342(3), 1343(4), 1331 and 42 U.S.C. §§ 1983 and 1988. Also, 42 U.S.C. §§ 2796 and 2928(f) are involved. This case also involves 42 U.S.C. § 2701 et seq., as amended.

This case further involves 45 C.F.R. § 1015.735-17(c) and 45 C.F.R. § 1015.735-17(e)(1). 45 C.F.R. § 1069.8-6(b)(3)(ii) is also involved. 45 C.F.R. §1301.4-2 is involved.

The controlling regulation involved is Community Action Memoradum No. 23-A, August 6, 1966, Part C, subsection 4(b) which states "No person shall hold a job over which a member of his immediate family exercises supervisory authority."

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UNITED STATES SUPREME COURT

1981 TERM

ANN R. PETERSON BUCHANON

Plaintiff-Appellant

VERSUS

MACON COUNTY COMMUNITY ACTION COMMITTEE, INC., MACON COUNTY HEAD START PROGRAM, MACON COUNTY BOARD OF EDUCATION, AND COMMUNITY SERVICES ADMINISTRATION

Defendants-Appellees

PETITION FOR WRIT OF CERTIORARI

REPORTS

The opinion of the United States District Court for the Middle District of Alabama, Eastern Division is reported at _____ Fed. Supp. _____.

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at _____ Fed. 2d. _____.

The opinion of the United States Court of Appeals for the Eleventh Circuit regarding appellant's petition for rehearing is reported at _____ Fed. 2d _____ dated March 22, 1982.

JURISDICTION

Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 2101 (c). Appellant's appeal was denied by the United States Court of Appeals for the Eleventh Circuit by order dated February 12, 1982. Appellant's petition for rehearing was denied by that court by order dated March 22, 1982.

STATEMENT OF THE CASE

Appellant, Ann R. Peterson Buchanon, filed this action in the United States District Court for the Middle District of Alabama, Eastern Division pursuant to 28 U.S.C. §§ 1343(4), 2201, and 2202. Appellant sought to secure protection of and to redress the deprivation of her civil rights.

Plaintiff, Ann R. Peterson Buchanon, had been employed for approximately ten (10) years as a teacher for the Macon County Head Start Program, hereinafter referred to as the MCHSP, when she signed her annual contract to be employed as a said teacher effective on August 23, 1974 to May 23, 1975, with the Macon County Board of Education hereinafter referred to as the MCBE, the delegate agency for the head start program in Macon County, Alabama. Prior to that date, the Macon County Community Action Committee, hereinafter referred to as MCCAC, the grantee agency, pursuant to the 1972 Amendments to the Economic Opportunity Act, 42 U.S.C. § 2701

et seq., authorized the MCBE to be the delegate agency for the head start program and by a memorandum of agreement dated September 8, 1972, in subsection 8 provided that "all Head Start are employees of MCCAC and, consequently, will be governed by the Personnel Policies and Procedures of the MCCAC."

However, on October 23, 1974, the MCCAC and the MCBE executed a memorandum of agreement which provided in subsection 5 that "The Headstart Personnel will be employees of the delegate agency and therefore be governed by the personnel policies of the delegate agency."

Subsequent to August 23, 1974, plaintiff was elected to the Macon County Board of Education and is presently a member of said board.

That plaintiff continued to be employed as a head start teacher until, at a special session held on March 12, 1975, the MCBE temporarily suspended plaintiff without a hearing. As such, plaintiff was denied due process of law in that she was deprived of her means of livelihood without notice of what she was being suspended for and an opportunity to present her reasons for her continued employment.

That by letter dated March 25, 1975, addressed to the Chairman, Macon County Head Start Policy Committee, plaintiff requested a hearing regarding her recent suspension since that committee was charged with the responsibility regarding personnel actions. Said committee

did not afford plaintiff a hearing.

That by letter dated April 7, 1975, addressed to the Superintendent of the MCBE, plaintiff again requested a hearing regarding her suspension by the MCBE.

That on May 6, 1975, a hearing was convened before the MCBE. Plaintiff was advised that she had a conflict of interest in that she was a member of the MCBE and at the same time a head start teacher which violated Community Action Memo No. 23-A, August 26, 1966, Part C, Subsection 4(a) which provided that "No person shall hold a job while he or a member of his immediate family serves on a board or committee of a grantee or delegate agency if that board or committee has authority to order actions affecting his job."

The MCBE stated that, since the MCBE was the delegate agency and plaintiff was a member of the MCBE, plaintiff could not be a member of that board and a head start teacher.

Plaintiff stated in effect that notwithstanding the memorandum of agreement the head start employees were employees of the MCCAC in that the MCCAC paid the salaries of the head start employees. Plaintiff also argued that notwithstanding the memorandum of agreement the Head Start Policy Committee was in fact the only body which had authority over the head start employees and not the MCBE. That in fact the MCBE only rubber stamped

the personnel policy recommendations made by the Head Start Policy Committee. That the MCBE never initiated any personnel actions — terminate or employ.

Plaintiff states that the memorandum of Agreement executed by the MCBE on October 23, 1974, in question, was contrary to both state and federal law in that it provided the MCBE, a county board of education of the State of Alabama, a public body for all practical purposes, could by contract make private non public employees, employees of a public body who were not afforded any of the benefits such as tenure ordinarily provided teachers and employees of a county board of education. Plaintiff submits that only the Legislature of Alabama may enact laws relative to employees of a county board of education and not the parties in question. Plaintiff states that the agreement was clearly unconstitutional because the effect of same was to deny her due process and the equal protection of the Constitution of the United States.

In this respect, plaintiff argued that the agreement was unconstitutional because of the selective enforcement of same as it related to the above referred to Community Action Memo No. 23-A, August 6, 1966, in Part C, subsection 4(b) which states, "No person shall hold a job over which a member of his immediate family exercises supervisory authority." Plaintiff argued that the wife of the Executive Director of the MCCAC was an employee of the MCCAC which was in violation of the above referred to subsection and that none of the defendants had not then and as of to date initiated any disciplinary action against

said employee.

That the MCBE terminated the hearing and went into executive session. The MCBE voted four (4) to one (1), plaintiff voted against, to continue plaintiff's suspension.

Plaintiff thereafter filed an appeal to the MCCAC which failed and refused to affirmatively respond to said appeal.

That plaintiff then filed an appeal to defendant, Department of Health, Education and Welfare, Office of Child Development, Region 4, Atlanta, Georgia, and said defendant referred plaintiff's appeal back to the MCCAC.

Plaintiff to date has never received a final decision stating to the effect that she has been terminated as a head start teacher nor affirming the actions taken against her by the MCBE.

By order dated December 18, 1980, the District Court granted the motion for summary judgment filed by defendants, Macon County Community Action Committee, Inc., and Macon County Head Start Program. Further, by order dated February 9, 1981, the District Court granted the motion for summary judgment filed by defendants Community Services Administration and Macon County Board of Education, dismissing appellant's complaint.

Appellant timely appealed this dismissal to the United States Court of Appeals for the Eleventh Circuit.

After oral arguments, that court by order dated February 12, 1982, affirmed the District Court's opinion. Subsequently, by order dated March 22, 1982, that court denied appellant's petition for rehearing. Appellant now seeks a writ of certiorari from this court.

ARGUMENT

THE DISTRICT COURT IMPROPERLY GRANTED THE MOTION FOR SUMMARY JUDGMENT FILED ON BEHALF OF DEFENDANTS, MACON COUNTY COMMUNITY ACTION COMMITTEE, INC., MACON COUNTY HEAD START PROGRAM, COMMUNITY SERVICES ADMINISTRATION, AND MACON COUNTY BOARD OF EDUCATION.

Although plaintiff has listed four issues, since they all relate to the propriety of the district court's granting the defendants' motions for summary judgments, all of the issues will be argued under this heading and not separately.

On June 30, 1980, defendant Macon County Community Action Committee, Inc., filed a motion for summary judgment pursuant to Rule 56(b) of the Federal Rules of Civil Procedure. In connection with said motion, defendant filed affidavits of Ulysses Byas and Peter G. T.

Balogan. The defendant did not file a memorandum in support of its motion for summary judgment. As such, plaintiff was not and presently is not aware of the defendant's grounds for same. Nevertheless, the district court by order dated December 31, 1980, granted defendant's motion, dismissing the Macon County Community Action Committee, Inc. from this cause.

The district court simultaneously filed with this order a memorandum opinion which allegedly supported its order. The court stated that "The plaintiff was an employee of the Macon County Head Start Program' but was later elected to and was holding the office of member of the Macon County Board of Education of the State of Alabama. Plaintiff was holding two offices of profit in the same governmental organization. She served as her own employee and employer in the same governmental unit. The defendants have given the reason for her dismissal as conflict of interest and have raised the same point as a defense."

The court further held that "The plaintiff raises the issue of another possible conflict of interest within the Macon County Community Action Committee. The fact that the Macon County Community Action Committee may have made a mistake on another matter does not justify continuation of plaintiff's employment. "*A claim of unequal protection does not lie among the members of a class but lies between classes.*" (Emphasis added).

Plaintiff submits Rule 56(c) provides that the standard for granting summary judgment is only "when it ap-

pears that there is no genuine issue as to any material fact that the moving party is entitled to a judgment as a matter of law." The district court, therefore, has no discretion to enlarge its power to grant summary judgment beyond the limits prescribed by the rule. *National Screen Service Corporation v. Poster Exchange, Inc.*, 305 F. 2d 647 (5th Cir. 1962).

The court may grant the motion only when the test set forth therein has been met and must deny the motion as long as an issue remains for trial. *Simler v. Conner*, 82 S. Ct. 609, 372 U. S. 221 (1963).

As such, the motion cannot be granted merely because the court believes that the mover will not prevail if the action is tried on the merits. *Harl v. Acacia Mutual Life Insurance*, 317 F. 2d 577 (U.S. App. D. C. 1963).

The district court in the present case clearly did not follow the above referred to standard. Plaintiff stated in her complaint and counter-affidavit that she was denied due process of law in that she was never terminated, but instead temporarily suspended by the defendant, Macon County Board of Education, for numerous years. This fact goes to the issue raised that the defendant failed to comply with the statutory mandate to provide adequate disciplinary rules and regulations and appeal procedures for Head Start employees. The district court completely ignored this fact in granting defendants' motions for summary judgment.

Furthermore, plaintiff also stated in her complaint and counter-affidavit filed in connection with her opposition to the motions for summary judgment that plaintiff was denied the equal protection of the law by the defendants. This is based on the fact that Community Action Memo No. 23-A, August 26, 1966, Part C, in question, was used by the defendant to justify their suspension of plaintiff. However, as admitted by defendant, Macon County Community Action Committee, in answer number 14 to the plaintiff's first set of interrogatories, (R. p. 75), Catherine Balogan who was also the wife of Peter Balogan, Director of the Macon County Community Action Committee, was also at the same time employed as a Head Start teacher just as plaintiff was. However, Catherine Balogan was never disciplined as plaintiff was. This clearly goes to the question of the denial of equal protection as regarding plaintiff. Furthermore, this fact has been known by all of the parties to this proceeding and never disputed. As such, the district court erred in granting defendant's motions for summary judgment in that there was and still is a genuine issue as to material fact.

In the Community Action Committee answer to interrogatory 15 of plaintiff's first set, the defendant admitted that Alvin Marable was on the Board of Directors of the Macon County Community Action Committee while his wife, Norma Marable, was working as an aid. (R.p. 75). This is clearly another example of the dual standard used by the defendants as it applied to plaintiff.

Further on the face of the opinion, the district court committed a manifest error. The court on page two (2) of its opinion, stated that "a claim of unequal protection does not lie among the members of a class but lies between classes." This statement was not elaborated on, and as such, plaintiff assumes that what the court was referring to is that since the plaintiff is black and Catherine Balogan is black, and so presumably the Marables are black, plaintiff cannot allege as her basis for her claim of denial of equal protection, simply because neither Balogan nor the Marable were disciplined for their apparent violation of the memorandum in question by the defendants.

It is well known though not to warrant citation that a claim of a denial of equal protection may be made when a white is treated more favorable than a black.

But it is absurd to conclude that the same claim may not be asserted simply because the parties involved are all black.

Article 14, Section 1 of the United States Constitution clearly provides that "No State shall...deny any person within its jurisdiction the equal protection of the law." The defendant, Macon County Board of Education is clearly an agency of the State of Alabama and as such, there was clearly state action involved when it committed the acts complained of herein.

This court recently in *Zeigler v. Jackson*, 638 F. 2d 776 (5th Cir. 1981), in reversing the district court, held, on

page 779, that "If distinctions between similarly situated individuals are to withstand an equal protection analysis, such distinctions must be reasonable, not arbitrary, and must rest on grounds having a fair and substantial relation to the subject of the legislation."

This court further held that "The unequal application of a state law, fair on its face, may act as a denial of equal protection..." citing *Yick Wo v. Hopkins*, 118 U. S. 356, 373-74, 6 S. Ct. 1064 (1886).

The district court in the present case reasoned on page 2 of its opinion that "Plaintiff vacated her teaching position when she accepted membership on the Board of Education," citing *Smith v. State ex rel Mayor & Town Council*, 276 Ala. 378, 162 So. 2d 437.

Smith, supra, involves article 17, section 280 of the Constitution of Alabama of 1901. This section prohibits the holding of two (2) offices or positions of profit in state government which are in fact two (2) offices or positions of state government. This prohibition is commonly referred to in other states as the dual office holding statute.

It is conceded that a member of a County board of education is an office position under state government since the board is an agency of the state. However, the position of a teacher for the Macon County Head Start Program was not in the present record established as a matter of fact. It is not an agency of the state in that said teachers are considered state teachers under the laws of Alabama.

At most, the position is a job or employment for a private non-profit organization which is funded by the federal government.

The defendants nor the district court did not cite any state statute which provided that Macon County Head Start Program and its employees were state employees.

What is present is simply a contract which is unlawful in that (1) said memorandum of agreement is contrary to 45 C.F.R. Section 1015-735-17(e)(1) in that this federal regulation permitted employees of the Office of Equal Opportunity to at the same time hold a position in state or local government on other than a full time basis -(2) and, an employee of the Macon County Community Action Committee, Inc. was and is at the same time the wife of the director of said committee. This is a violation of equal protection.

Smith, supra, clearly involved the question of whether the plaintiff could serve as Councilman and a member of the state legislature. The court said no. This case has absolutely no bearing on the present case in that plaintiff has not violated any federal or state statutes.

CONCLUSION

Plaintiff respectfully submits that the district court erred in granting defendants' motion for summary judgment, dismissing said defendants from this cause. There are several genuine issues of material facts which are present which can not be resolved until after a trial on the merits is held. The district court's opinion in other respects is not supported by the record developed in this case and as such, this is grounds enough to reverse said opinion and order.

Therefore, Plaintiff, Ann R. Peterson Buchanon, prays that this court reverses the district court and render judgment in favor of plaintiff. Plaintiff further prays for any and all other relief this court deems appropriate.

Respectfully submitted,

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Attorney for Plaintiff-Appellant
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CERTIFICATE

I hereby certify that copies of the foregoing Petition for a Writ of Certiorari was mailed to all counsel on _____, 1982.

_____

ROBERT L. DANNER, JR.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

FILED: DEC. 31, 1980

MRS. ANN R. PETERSON BUCHANON, PLAINTIFF

VERSUS CIVIL ACTION NO. 79-90-E

MACON COUNTY COMMUNITY ACTION
COMMITTEE, INC.; ET AL, DEFENDANTS

ORDER

In accordance with the Memorandum Opinion entered in the above-styled cause on this date, it is

ORDERED by this Court that the motion for summary judgment filed herein June 30, 1980, by Defendants, Macon County Community Action Committee, Inc., and Macon County Headstart Program, be, and the same is hereby, granted, and the Macon County Community Action Committee, Inc., and the Macon County Headstart Program are hereby dismissed as Defendants to this cause of action. It is further

ORDERED by this Court that the motion to strike filed herein August 8, 1980, by the Macon County Community Action Committee and the Macon County

Headstart Program be, and the same is hereby, denied as moot.

DONE this 31st day of December, 1980.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

MRS. ANN R. PETERSON BUCHANON

Plaintiff,

VERSUS CIVIL ACTION NO. 79-90-E

MACON COUNTY COMMUNITY ACTION
COMMITTEE, INC.; ET AL

Defendants.

MEMORANDUM OPINION

This cause is now submitted to the Court on the motion for summary judgment filed herein June 30, 1980, by Defendants, Macon County Community Action Committee, Inc., and Macon County Headstart Program. Upon consideration of the motion, of the pleadings, of the affidavits, and of the depositions filed, it is the opinion of this Court that the Plaintiff has no basis for an action against the aforesaid Defendants for the reasons stated hereinafter.

Paragraph II.E., of the complaint contains the following allegation:

> "Defendant, Macon County Board
> is an Alabama State County board

> of education which has been designated the delegate agency by the Macon County Community Action Committee, Inc., to administer the Macon County Head Start Program."

The Plaintiff was an "employee of the Macon County Head Start Program" but was later elected to and was holding the office of Member of the Macon County Board of Education of the State of Alabama. Plaintiff was holding two offices of profit in the same governmental organization. She served as her own employee and employer in the same governmental unit. The Defendants have given the reason for her dismissal as conflict of interest and have raised the same point as a defense.

The Plaintiff raises the issue of another possible conflict of interest within the Macon County Community Action Committee.[1/] The fact that the Macon County Community Action Committee may have made a mistake on another matter does not justify continuation of Plaintiff's employment. A claim of unequal protection does not lie among the members of a class but lies between classes.

This Court will take judicial notice of Article XVII, § 280 of the Constitution of Alabama of 1901, which states:

[1/] Plaintiff contends that the Defendants violated her right to equal protection by firing her for her conflict of interest while continuing employment of one allegedly employed in violation of statutes prohibiting nepotism.

> "No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds."

It, therefore, appears that the Plaintiff vacated her teaching position when she accepted membership on the Board of Education. *Smith v. State ex rel Mayor & Town Council*, 276 Ala. 378, 162 So. 2d 437. Plaintiff, therefore, had no right to the office which she claims in this suit.

The material facts are, therefore, not at issue, and as a matter of law, the aforesaid motion for summary judgment filed by Defendants, Macon County Community Action Committee, Inc., and Macon County Headstart Program, should be granted.

An Order will be entered in accordance with this Opinion.

DONE this 31st day of December, 1980.

/S/ ILLEGIBLE
UNITED STATES DISTRICT JUDGE

APPENDIX-B

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

MRS. ANN R. PETERSON BUCHANON PLAINTIFF

VERSUS CIVIL ACTION NO. 79-90-E

MACON COUNTY BOARD OF
EDUCATION; ET AL, DEFENDANTS

ORDER

In accordance with the Opinion entered in the above-styled cause on this date, it is

ORDERED by this Court that the motions for summary judgment filed herein January 13 and 16, 1981, by the Defendants, Community Services Administration and the Macon County Board of Education, be, and the same are hereby, granted, and the above-styled cause is hereby dismissed, with costs taxed against the Plaintiff, for which execution may issue.

DONE this 9th day of February, 1981.

/S/ ILLEGIBLE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

MRS. ANN R. PETERSON BUCHANON PLAINTIFF

VERSUS CIVIL ACTION NO. 79-90-E

MACON COUNTY BOARD OF
EDUCATION: ET AL DEFENDANTS

OPINION

This cause is submitted to the Court on the motions for summary judgment filed herein January 13 and 16, 1981, by the Defendants, Community Services Administration and the Macon County Board of Education. Upon consideration of the motions, of the pleadings, of the affidavit, and of the evidence before it, when viewed in the light most favorable to the Plaintiff, it is the opinion of this Court that there is no genuine issue as to any material fact and that the Defendants are entitled to judgment as a matter of law for the reasons stated hereinafter.

Paragraph II.E., of the complaint contains the following allegation:

> "Defendant, Macon County Board is an Alabama State County board of education which has been designated the delegate agency by the Macon County Community Action Committee, Inc., to administer

> the Macon County Head Start Program."

The Plaintiff was an "employee of the Macon County Head Start Program" but was later elected to and was holding the office of Member of the Macon County Board of Education of the State of Alabama. Plaintiff was holding two offices of profit in the same governmental organization. She served as her own employee and employer in the same governmental unit. The Defendants have given the reason for her dismissal as conflict of interest and have raised the same point as a defense.

The Plaintiff raises the issue of another possible conflict of interest within the Macon County Community Action Committee.[1/] The fact that the Macon County Community Action Committee may have made a mistake on another matter does not justify continuation of Plaintiff's employment. A claim of unequal protection does not lie among the members of a class but lies between classes.

This Court will take judicial notice of Article XVII, § 280 of the Constitution of Alabama of 1901, which states:

> "No person holding an office of profit under the United States, except postmasters, whose annual salaries

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1/ Plaintiff contends that the Defendants violated her right to equal protection by firing her for her conflict of interest while continuing employment of one allegedly employed in violation of statutes prohibiting nepotism.

> do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds."

It, therefore, appears that Plaintiff vacated her teaching position when she accepted membership on the Board of Education. *Smith v. State ex rel Mayor & Town Council*, 276 Ala. 378, 162 So.2d 437. Plaintiff, therefore, had no right to the office which she claims in this suit.

This Court will take further notice of 42 U.S.C. § 2928f(a), which states as follows:

> "Each Headstart agency shall observe standards of organization, management, and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this part and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism. Each such agency shall establish or adopt

rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each agency shall also provide for reasonable public access to information, including but not limited to public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible. Each such agency shall adopt for itself and other agencies using funds or exercising authority for which it is responsible, rules designed to establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits; to assure that only persons capable of discharging their duties with competence and integrity are employed and that employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness; *to guard against personal or financial conflicts of interests*; and to define employee duties in an appropriate manner which will in any case preclude employees from participating, in connection with the

> performance of their duties, in any form of picketing, protest, or other direct action which is in violation of law." (emphasis added)

Each Headstart agency is clearly given the statutory authority to administer its organization free of conflicts of interest such as the one in point. The evidence shows that the Plaintiff had adequate notice and hearing so that no property rights, as such, were infringed upon.

No response in opposition to the aforesaid motions for summary judgment was made by the Plaintiff, and no appearance was made by the attorney for the Plaintiff at the scheduled pretrial conference on January 29, 1981, at Opelika, Alabama, in which all motions were to be argued.

The material facts are, therefore, not at issue, and as a matter of law, the aforesaid motions for summary judgment filed by the Defendants should be granted.

An Order will be entered in accordance with this Opinion.

DONE this 9th day of February, 1981.

/S/ ILLEGIBLE
UNITED STATES DISTRICT JUDGE

APPENDIX-C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 81-7185

MRS. ANN R. PETERSON BUCHANNON,
Plaintiff-Appellant,

versus

MACON COUNTY BOARD OF EDUCATION
AND COMMUNITY SERVICES ADMINISTRATION
Defendants-Appellees

Appeal from the United States District Court for the
Middle District of Alabama

(February 12, 1982)

Before MORGAN, JOHNSON and HENDERSON, Circuit Judges.

PER CURIAM: AFFIRMED. See Circuit Rule 25.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 81-7185

MRS. ANN R. PETERSON BUCHANON,
Plaintiff-Appellant

versus

MACON COUNTY BOARD OF EDUCATION AND
COMMUNITY SERVICES ADMINISTRATION,
Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Alabama

ON PETITION FOR REHEARING AND SUGGESTION
FOR REHEARING EN BANC

(Opinion February 12, 1982, 11th Cir., 1982, F.2d)

Before MORGAN, JOHNSON and HENDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/S/ ILLEGIBLE
United States Circuit Judge